

THE HONOURABLE SRI JUSTICE C.V. RAMULU

WRIT PETITION No.27790 OF 1998

DATED: 10-10-2007

Between:

The Vice-Chairman and Managing
Director, A.P.S.I.D.C. Ltd., HUDA-
Commercial Complex, Srinivasanagar
Colony (East), Hyderabad and another.

.. Petitioners

and

E. Eswaraiyah and others.

.. Respondents

THE HONOURABLE SRI JUSTICE C.V. RAMULU

WRIT PETITION No.27790 OF 1998

ORDER:

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This writ petition is filed seeking a Certiorari to call for the records relating to the common award, dated 30.12.1997, passed in I.D.No.90 of 1994 and batch, on the file of the Industrial Tribunal-cum-Labour Court, Anantapur, and quash the same as arbitrary and illegal.

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Petitioners are the management and the respondents 1 to 21 are workmen. It appears, the workmen filed individual claim petitions under Section 2-A (2) of the Industrial Disputes Act (for short 'the Act') stating that they were retrenched from service without following the provisions of Section 25-F of the Act, though they had put in more than 240 days of service in the year preceding the date of termination. All the said claim petitions were clubbed together and a common award was passed by the Tribunal setting aside the termination orders and directing the management to reinstate the workmen with continuity of service, but without backwages. Aggrieved by the said award, the present writ petition is filed by the management.

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It was the case of the management that it has followed the provisions of Section 25-F of the Act scrupulously. It was also stated that though the Corporation is a State within the meaning of Article 12 of the Constitution of India, it has a separate and distinct entity and has

its own legal personality and byelaws, though under the Articles of Association, the Government has authority to issue instructions on the question of policy. It has to conduct its affairs prudently within the limits of its Articles of Association. The Company is incorporated for augmenting the irrigation potential in the State of Andhra Pradesh by executing and maintaining lift irrigation and ground water schemes to serve the farmers particularly S.C., S.T., B.C. and those belonging to weaker sections, small and marginal farmers at large, but not for the benefit of casual labour. Further, the Corporation engaged many persons on temporary basis because of its limited finances and fluctuating quantum of work in different years and does not permit luxury of large permanent establishment. The works, which are essential, are being carried out and for that purpose workers are engaged on casual basis. The services of such casual workers are being dispensed with depending on the work load. In the light of the past years' experience, the Corporation intended to reschedule its requirement of persons to be engaged on casual and different schemes. Keeping the requirement in view and also the availability of funds, the Corporation proposed to dispense with the services of persons engaged on different modes of payment, who are found surplus. Thus, the services of the workmen, who are found to be surplus, were dispensed with after following the provisions of Section 25-F of the Act.

Before the Labour Court, on behalf of the workmen, W.W.1 was examined and Exs.W1 to 19 were marked. On behalf of the management, M.W.1 was examined and Exs.M1 to M7 were marked.

After detailed consideration of both oral and documentary evidence, the Labour Court found that the management, though followed clauses (a) and (b) of Section 25-F of the Act, did not follow

clause (c) and no record in compliance of Section 25-F (c) was placed before it and, further, even according to M.W.1, the Government refused the proposals of retrenchment on forwarding of the state level seniority list of the workmen proposed for termination. While dealing with the contention of the management that for the purpose of consideration of the seniority, each district has to be considered as a Unit and, therefore, Ex.M7 may be accepted, the Labour Court held that even assuming for a moment that each district has to be taken as a Unit, the management failed to file even a district seniority list. It was further held that no material was filed to say that the list was published before the termination. Thus, the Labour Court ventured to set aside the termination orders and directed the management to reinstate the workmen with continuity of service, but without any backwages.

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In view of the above, the questions that arise for consideration in this writ petition are whether Section 25-F (c) of the Act is a mandatory provision and non-compliance of such provision would vitiate the retrenchment orders passed by the management, while complying with clauses (a) and (b) of Section 25-F of the Act, and the non-furnishing of seniority list itself would fatal to the retrenchment or not.

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In this regard, the learned counsel for the management relied upon a decision in **Bombay Union of Journalists and others v. State of Bombay and another**^[1], wherein, at paragraph 12, it was held as under:

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“In this connection, there is one more consideration which is relevant. We have already seen the requirement of S.25F (a). There is a proviso to S.25F (a) which lays down that no such notice shall be necessary if the retrenchment is under an agreement which specifies a date for the termination of

services. Clause (a) of S.25F, therefore, affords a safeguard in the interests of the retrenched employee; it requires the employer either to give him one month's notice or to pay him wages in lieu thereof before he is retrenched. Similarly, clause (b) provides that the workman has to be paid at the time of retrenchment, compensation which shall be equivalent to 15 days' average pay for every completed year of service or any part thereof in excess of six months. It would be noticed that this payment has to be made at the time of retrenchment, and this requirement again provides a safeguard in the interests of the workman; he must be given one month's notice or wages in lieu thereof and he must get retrenchment compensation as prescribed by clause (b). The object which the Legislature had in mind in making these two conditions obligatory and in constituting them into conditions precedent is obvious. These provisions have to be satisfied before a workman can be retrenched. The hardship resulting from retrenchment has been partially redressed by these two clauses, and so, there is every justification for making them conditions precedent. The same cannot be said about the requirement as to clause (c). Clause (c) is not intended to protect the interests of the workman as such. It is only intended to give intimation to the appropriate Government about the retrenchment, and that only helps the Government keep itself informed about the conditions of employment in the different industries within its region. There does not appear to be present any compelling consideration which would justify the making of the provision prescribed by clause (c) a condition precedent as in the case of clauses (a) and (b). Therefore, having regard to the object which is intended to be achieved by clauses (a) and (b) as distinguished from the object which clause (c) has in mind, it would not be unreasonable to hold that clause (c), unlike clauses (a) and (b), is not a condition precedent.

Thus, it is clear that clause (c) of Section 25-F is a directory, but not mandatory. Therefore, it can be said that non-compliance of the provisions of Section 25-F (c) cannot negate the retrenchment orders

passed by the management. Further, the Labour Court went into an area, which is not relevant for the purpose of the case on hand, such as non-availability of seniority list. May be in a given case, the Labour Court would go into the fact as to whether the 'last come first go' theory has been adopted by the employer while retrenching the workmen. But, in this case, it is not the case of the workmen that they were retrenched from service, while their juniors were continuing. Under those circumstances, the question as to whether a seniority list was prepared or not has no relevance for the purpose of deciding as to the validity of the retrenchment of the workmen.

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For all the above reasons, I am of the opinion that the Labour Court grossly erred in holding that though clauses (a) and (b) of Section 25-F of the Act have been complied with by the management, clause (c) of the said Section has not been complied with and no seniority list is prepared and, hence, the termination orders are bad. Thus, the workmen are not entitled for any relief as sought for in the I.Ds. and the impugned award is liable to be set aside.

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Accordingly, the writ petition is allowed setting aside the impugned common award, dated 30.12.1997, passed in I.D.No.90 of 1994 and batch, on the file of the Industrial Tribunal-cum-Labour Court, Anantapur. No order as to costs.

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C.V. RAMULU, J

10th October, 2007.

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[\[1\]](#) AIR 1964 S.C. 1617